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Maginot, Moore & Beck LLP
One Indiana Square, Suite 2200
Indianapolis, IN 46204

EXAMINER
DESIR, PIERRE LOUIS

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FEI LIU, FULIANG WENG, CHAO SHEN, and LIN ZHAO

Appeal 2017-008769
Application 14/105,233[1]
Technology Center 2600

Before ALLEN R MACDONALD, IRVIN E. BRANCH, and JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Technology

The application relates to "generating summaries of events using messages from observers of the events." Spec. ¶ 2.

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[1] According to Appellants, the real party in interest is Robert Bosch GmbH. App. Br. 3.

Illustrative Claim

Claim 1, is illustrative and reproduced below:

1. A method of processing messages pertaining to an event comprising:

receiving, with a network device in a summarization system, a plurality of messages pertaining to the event from electronic communication devices associated with a plurality of observers of the event;

generating, with a processor in the summarization system, a first message stream that includes only a portion of the plurality of messages corresponding to a first participant in the event;

identifying, with the processor in the summarization system, a first sub-event in the first message stream with reference to a time distribution of messages and content distribution of messages in the first message stream;

generating, with the processor in the summarization system, a sub-event summary with reference to a portion of the plurality of messages in the first message stream that are associated with the first sub-event; and

transmitting, with the network device in the summarization system, the sub-event summary to a plurality of electronic communication devices associated with a plurality of users who are not observers of the event.

References and Rejections[2]

Claims 1–18 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Final Act. 10–12.

[2] Throughout this opinion, we refer to (1) Final Action mailed July 27, 2106 ("Final Act."); (2) the Appeal Brief filed Dec. 27, 2016 ("App. Br."); (3) the Examiner's Answer mailed Apr. 4, 2017 ("Ans."); and (4) the Reply Brief filed May 30, 2017 ("Reply Br.").

Claims 1–4 and 10–13 stand rejected under 35 U.S.C. § 102(a)(2) as anticipated by Bendel (US 2011/0320542 Al, published Dec. 29, 2011). Final Act. 13–18.

Claims 5 and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Bendel and Rose (US 2011/0004465 Al, published Jan. 6, 2011). Final Act. 19–20.

Claims 6 and 15 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Bendel and Chua (Freddy Chong Tat Chua & Sitaram Asur, *Automatic Summarization of Events from Social Media*, hereinafter, "Chua"). Final Act. 20–21.

Claims 7–9 and 16–18 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Bendel, Chua, and Chen (US 2011/0184806 Al, published July 28, 2011). Final Act. 22–27.

ANALYSIS

Section 101 Rejection

In *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Supreme Court reiterates an analytical two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 79 (2012), "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an

ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* (citing *Mayo*, 566 U.S. at 78–79). In other words, the second step is to "search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (citing *Mayo*, 566 U.S. at 72–73).

Here, the Examiner finds that, although claim 1 is directed to a method—a statutory category of invention—the method is "only comprised of steps therein directed to either (a) conventional activities for collecting or presenting data (receiving messages; transmitting data to devices associated with users), or (b) actions that can be considered as part of abstract idea "of itself": specifically the assessment and arrangement of data." Final Act. 10. Thus, the Examiner finds claims 1–18 patent eligible under statute, but patent ineligible by judicial exception. *Id.* at 10–12; Ans. 2–16.

Appellants argue error because "the reasoning of the Office Action is improperly untethered from the actual limitations of the pending claims and does not properly establish that these claims are in fact directed to an abstract idea" and also because "any attempt to correct the lack of reasoning in the Office Action would be futile since the specific claim limitations are clearly not directed to an abstract idea." App. Br. 11; *see* App. Br. 8–18; Reply Br. 2–9.

We disagree with Appellants' arguments. The Examiner's analysis does, in fact, address the actual limitations of the pending claims. Specifically, the Examiner finds:

> the steps of the method are only comprised of limitations within the scope of ineligible subject matter in the form of an abstract idea "of itself" such as accessing or collecting data ("receiving . . . a plurality of messages . . . ", "identifying . . . a first sub-event . . . "), assessing and arranging data ("identifying . . . a first sub-event . . . ", "generating . . . a first message stream . . . ", "generating . . . a sub-event summary"), or to functions that may require more than the abstract idea itself, but not more than would be understood to be well-known and conventional in the industry, such as transmitting data across a network which is not defined in any particularly significant way ("transmitting, with the network device in the summarization system, the sub-event summary . . . ").

Ans. 3–4. We agree with the Examiner's conclusion that the claims are directed to an abstract idea. *Id.* at 2–5.

Appellants attempt to liken the claims at issue here to those the Federal Circuit found patent eligible in "*McRo*" (*McRo, Inc. v. Bandai Namco Games America Inc.,* 837 F.3d 1299 (Fed. Cir. 2016)). App. Br. 10–13; Reply Br. 3–6. Appellants argue

> the reasoning of McRo is directly applicable to the pending claims where the ordered combination of steps in claims 1 and 10 allow for the improvement realized by the limitations of the claims that enable automation of a process for the generation and transmission of sub-event summaries. Using claim 1 as an example, this claim includes specific rules for a method including generating a first message stream that includes only a portion of the plurality of messages corresponding to a first participant in the event, identifying a first sub-event in the first message stream with reference to a time distribution of messages and content distribution of messages in the first message stream, and generating a sub-event summary with reference to a portion

> of the plurality of messages in the first message stream that are associated with the first sub-event. These specific rules allow for a computerized system to generate sub-event summaries in an automated manner that is clearly not equivalent to prior-art conventional human activity. Applicants note that while McRo is in a much different technical field, the claim at issue in McRo also deals with receiving some "known" input data (phonemes with sequences) and performing operations based on a set of rules to generate an output (the a sequence of animated characters with lip synchronization and facial expression control). Thus, claims 1 and 10 are clearly analogous in structure to the allowable claims at issue in McRo and for at least this reason the section 101 rejection of these claims should be reversed.

Reply Br. 5–6. Appellants argue further:

> Applicants further note that other than an allegation that these claims are directed to a mere idea in and of itself, there is no evidence of record to support the allegations from the Office Action and Answer using the standard set forth in McRo. The Answer continues the errors described above by conflating so-called mental process with "conventional" prior art that is used to support a section 102 or 103 rejection of the claims with the section 101 analysis to conclude that because prior art *technology* ("conventional" technology) allegedly supports a prior art rejection of a claim that the claim must be directed to some abstract idea in and of itself.
>
> . . .
>
> These findings from the Answer fail to meet the requirements of the relevant legal standard set forth in McRo that there must be "evidence that the process previously used by animators [or conventional mental processes in the relevant field] is the same as the process required by the claims." *McRo* at 1314. The evidence proffered in the Answer that relies on the technological solutions of various prior art references to supposedly teach "conventional" mental processes clearly fail to meet this standard, even if the prior art actually did support a section 102 or 103 rejection of the claims (and the prior art does not).

Id. at 6.

We find Appellants' arguments unavailing. To whatever extent Appellants argue that the claims at issue include "specific rules [that] allow for a computerized system to generate sub-event summaries in an automated manner that is clearly not equivalent to prior-art conventional human activity," we find no such rules. *Id.* News clipping services, for example, are well-known to have summarized news events—from multiple perspectives even—"with reference to a time distribution of messages and content distribution of messages," as the claims recite. Appellants have not provided sufficient persuasive argument to convince us that the claims distinguish over conducting prior-art conventional human activity with a computer.

Accordingly, we agree with and adopt the Examiner's findings that claims 1–18 are patent-ineligible and the Examiner's response to Appellants' arguments, which Appellants do not persuasively rebut. Final Act. 10–12; App. Br. 8–18; Ans. 2–16; Reply Br. 2–9.

Section 102 and 103 Rejections

Appellants argue the anticipation rejection of claims 1, 4, 10, and 13 based on arguments presented with respect to claim 1 and argue the anticipation rejection of claims 2, 3, 11, and 12 based on arguments presented with respect to claim 2. App. Br. 19–28. Appellants argue the obviousness rejections of claims 5–9 and 14–18 on the basis that Rose, Chua, and/or Chen fail to make up for the deficiencies of Bendel as to claims 1 and 2. *Id.* at 29. Accordingly, our decision with respect to the art rejections of claims 1–18 depends on our analysis of Appellants' arguments with respect to the deficiencies of Bendel as to claims 1 and 2.

We have reviewed the Examiner's rejection of claims 1 and 2 in light of Appellants' arguments in the Briefs and the Examiner's response to Appellants' arguments. Final Act. 13–16, App. Br. 19–28, Ans. 16–29, Reply Br. 9–15. We are unpersuaded by Appellants' contentions for the reasons stated by the Examiner, which Appellants do not persuasively rebut. Ans. 16–19, Reply Br. 9–15. We adopt the Examiner's findings and conclusions that claims 1–18 are unpatentable. Final Act. 13–27. We provide the following for emphasis.

Appellants contend the Examiner "conflate[s] the teachings of Bendel for the generation of an output message 60' based on an individual input message 60 with the limitations of the pending claims" and "ignore[s] a proper[] analysis of the specific limitations of the claims by alleging that the generation of a 'numerical value' ranking in Bendel teaches both the generation of message streams and the identification of sub-events as required by the claims." Reply Br. 9–10; *see* App. Br. 19–28, Reply Br. 10–15.

With respect Appellants' former contention, Appellants elaborate:

> there is absolutely no teaching or suggestion for any of the limitations of the claims that require the generation of the first message stream that includes only a portion of the plurality of messages corresponding to a first participant in the event. Even if the message analyzer 30 in Bendel receives more than one input message 60 and potentially generates more than one output message 60', these teachings only imply that Bendel processes *individual messages* and, based on the contents of individual messages, generates output messages 60' that each correspond to one input message 60, which is clearly not a sufficient factual foundation to support a section 102 rejection of the claims.

Reply Br. 11. We disagree with Appellants' conclusion that the Examiner has not established a sufficient factual basis.

We first note that Bendel's message analyzer does, in fact, receive multiple input messages. Bendel describes that "[m]essage analyzer **30** receives messages **60** from data sources **40** and analyzes messages **60** [and] . . . generates message **60'** based on the analysis of messages **60** and transmits message **60'** to client **20**." Bendel ¶ 16. To whatever extent Appellants argue claim 1's "first message stream that includes only a portion of the plurality of messages corresponding to a first participant in the event" requires the first message stream to include "more than one output message 60'," we disagree. Reply Br. 11. "[O]nly a portion of the plurality of messages" does not preclude only a single message in the portion. Thus, Appellants' argument is not commensurate with the scope of the claim. Further, claim 2's generation of "a second message stream that includes only a portion of the plurality of messages corresponding to a second participant in the event" corresponds to a different stream of "messages **60**," and therefore, a different "message **60'**" based on the input stream. Accordingly, Appellants' arguments are unpersuasive.

As to Appellants' allegation of error because Bendel's "generation of a 'numerical value' ranking [cannot teach] both the generation of message streams and the identification of sub-events as required by the claims," we disagree. Reply Br. 10. Bendel's numerical values identify the sub-events, which are then included in the sub-event summary. *See, e.g.*, ¶¶ 66–68. To whatever extent Appellants argue the claim requires different sub-events in the sub-event summary than those identified, we are unpersuaded of error because Appellants again argue beyond the scope of the claim.

In view of the foregoing, we are unpersuaded of error in the Examiner's decision to reject claims 1–18 as anticipated or obvious over the cited art. Final Act. 13–27.

DECISION

We sustain the Examiner's decision rejecting claims 1–18 under 35 U.S.C. § 101 and of claims 1–18 under 35 U.S.C. §§ 102 and 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED